

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA MOBILITY, INC.,
and GENERAL INSTRUMENT CORPORATION,

Defendants.

NO. 2-10-cv-01823-JLR

NOTICE OF SAMSUNG'S JOINDER IN
DEFENDANTS' MOTION TO SEAL
DOCUMENTS AND EXCLUDE
UNAUTHORIZED PERSONS FROM THE
COURTROOM

Nonparty Samsung Electronics Co., Ltd. ("Samsung") hereby joins Motorola's Motion to Seal Documents and Trial Testimony and Exclude Unauthorized Persons From the Courtroom During Testimony Regarding Trade Secrets (Dkt. 495) as it pertains to the Trial Exhibits 2769, 3163, and 3238 (Samsung-Motorola licenses and meeting presentation), trial exhibits, and testimony regarding the terms of these licenses. In support of this notice, Samsung offers the Declaration of Indong Kang, Principal Engineer and IP Counsel in the IP Center at Samsung ("Kang Decl."), submitted herewith. It is Samsung's understanding that these documents, or summary information from the licenses, may be used as trial exhibits and/or demonstratives.

There are compelling reasons for these documents to be sealed in their entirety. Accordingly, Samsung requests an order sealing the terms of these documents, should either party offer one or both of them into evidence. Samsung further requests an order

1 redacting and sealing all portions of any summary exhibits or demonstratives that contain
2 information about the terms of these licenses or other confidential information from the
3 meeting presentation. If the parties do not offer the documents into evidence, the
4 documents should not be made part of the public record in this action. Samsung further
5 requests that to preserve the confidentiality of the sealed information, the courtroom be
6 closed when testimony is given on issues involving the licenses or their terms and that
7 any such testimony and the transcripts of that testimony be sealed.

8 Samsung considers the terms of the Samsung-Motorola licenses and the meeting
9 presentation to be highly sensitive, proprietary business information. (Kang Decl. ¶ 6.)
10 Samsung consented to use of these documents on the condition that the confidentiality
11 of the information would be maintained. (Kang Decl. ¶ 5.) These documents have not
12 been disclosed to the public. (Kang Decl. ¶ 4.) They contain highly sensitive, proprietary
13 business information regarding licensing terms and conditions. (Kang Decl. ¶ 6.)
14 Knowledge of the detailed terms of these agreements and Samsung's licensing
15 negotiations would provide an unfair strategic advantage to Samsung's competitors and
16 other potential licensing partners, by providing them with a one-sided negotiating
17 advantage over Samsung. (Kang Decl. ¶ 7.) This unfair advantage could substantially
18 interfere with Samsung's ongoing and future licensing negotiations. (Kang Decl. ¶ 7.)

19 The Ninth Circuit has held that the public right of access to court records is not
20 absolute but can be outweighed if there are "compelling reasons" for a document to be
21 sealed. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006).
22 The Ninth Circuit has stated that courts must ensure that the public's right of access does
23 not allow court records to be used "as sources of business information that might harm a
24 litigant's competitive standing." *In re Elec. Arts, Inc.*, 298 F. Appx. 568, 569 (9th Cir.
25 2008) (sealing license agreement) (internal quotations and citation omitted). The Ninth
26 Circuit emphasized in *In re Electronic Arts* that compelling reasons to seal documents
exist where public court records might become a "vehicle for improper purposes" such as

1 the release of trade secrets. See id. at **1. Furthermore, licensing terms such as
 2 "pricing terms, royalty rates, and guaranteed minimum payment terms" are precisely the
 3 type of information that might harm a litigant's competitive standing and that plainly fall
 4 within the definition of trade secrets. See id. at **2.

5 Courts in the Ninth Circuit have repeatedly found that licensing terms should be
 6 sealed. See, e.g., Powertech Tech., Inc. v. Tessera, Inc., No. C 11-6121 CW, 2012 WL
 7 3283420, at *9 (N.D. Cal. Aug. 10, 2012); AMC Tech., L.L.C. v. Cisco Sys., No. 11-CV-
 8 03403, 2012 U.S. Dist. LEXIS 9934, at *5 (N.D. Cal. Jan. 27, 2012); TriQuint
 9 Semiconductor v. Avago Techs. Ltd., No. 09-CV-1531, 2011 WL 4947343, at *2 (D. Ariz.
 10 Oct. 18, 2011).

11 For these reasons, the Samsung-Motorola licenses and licensing negotiations, and
 12 any trial exhibits, and testimony containing information regarding their terms and
 13 transcripts of such testimony should be sealed, and unauthorized persons should be
 14 excluded from the courtroom during testimony regarding the licensing terms.

15 DATED this 9th day of November, 2012.

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CERTIFICATE OF SERVICE

I certify that on this 9th day of November, 2012, the foregoing document was electronically filed with the Clerk of the U.S. District Court for the Western District of Washington using the CM/ECF system, which will send notification of such filing to all parties of record.

DATED this 9th day of November, 2012.

s/ Karen Lang Crane

Karen Lang Crane, Legal Assistant
GORDON THOMAS HONEYWELL LLP